992

SUPREME COURT OF THE UNITED STATES.

No. 130.

WILLIAM A. SHAFFER, PLAINTIFF IN ERROR,

v.

JAMES A. SCUDDAY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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State of Louisiana, Fifth Judicial District Court, in and for the Parish of Terrebonne. Appeal in the case entitled and numbered

JAMES A. SCUDDY, appellant,
v.
WILLIAM A. SHAFFER, appellee. } No. 754.

Petition.

To the Honorable the 5th Judicial District Court of the State of Louisiana, in and for the Parish of Terrebonne.

The petition of James A. Scuddy, residing in the Parish of Lafourche Interior, would respectfully represent that he is the owner and proprietor of lots Nos. 5 and 6, being the Southeast quarter of section No. 71, in township No. 17 of range No. 16, containing one hundred and sixty-one and fifty-two one-hundredths acres, more or less, which he acquired by the location of a land warrant, No. 580, for three hundred and twenty acres of land, issued by the State of Louisiana, as will be seen by reference to the Certificate of the Register of the Land Office, which are hereunto annexed for reference.

That one William A. Shaffer, of the Parish of Terrebonne, has taken possession of said tract of land, which is within the said Parish of Terrebonne, and refuses to deliver to your petitioner possession thereof, though thereunto amicably requested, and is committing great waste and damage on said tract of land, to petitioner's great damage, in the sum of one thousand dollars, by cutting and destroying the timber on the same.

That there is also a portion of said tract of land in cultivation, and the rents and fruits thereof justly belong to your petitioner, and are well worth five hundred per year; that said tract of land is worth five thousand dollars.

Wherefore, petitioner prays, that the said W. A. Shaffer be duly cited before this Honorable Court, and that after the legal delay, your petitioner be declared the owner and proprietor of the tracts of land above described, that the said Shaffer be condemned to pay him said sum of one thousand dollars damages, five hundred dollars for fruits and revenues per year, and he pray for all and general relief—and that he may be entitled to a writ of possession to restore him the said land.

(Signed) J. C. BEATTY,
Attorney for plaintiff.

Filed 8th April, 1851.

GR. BUDDENBROCK,
Clerk.

Citation.

The State of Louisiana.

In the name, and by the authority of the District Court, sitting in and for the Parish of Terrebonne.

J. A. SCUDDY
v.
W. A. SHAFFER.

To William A. Shaffer, residing in the Parish of Terrebonne:

You are hereby summoned to comply with the demand in the petition, a true copy whereof is hereunto annexed, or file your answer thereto in writing with the undersigned Clerk of said Court, at his office, at Houma, in two days after the service hereof.

Witness the Honorable David A. Randall, Judge
[L. S.] of the said Court, this 9th day of April, A. D. 1851.

(Signed) GR. BUDDENBROCK,
D'y Clerk.

Sheriff's Return.

Received this citation, with a true copy of petition and citation, on the 9th April, 1851, and served the same on the same day, month, and year, by delivering the said true copy of petition and citation to W. A. Scudder, in person. I make this, my return.

(Signed) W. VERRET,
Sheriff.

Filed 11th April, 1851.

(Signed) GR. BUDDENBROCK,
D'y Clerk.

Judgment by Default.

On Tuesday morning, the 22d day of April, 1851, the Court met pursuant to adjournment.

Present: The Honorable D. A. Randall, Judge of said Court.

J. A. SCUDDAY
v.
W. A. SHAFFER. } No. 754.

In this case the legal delay having expired, and no answer having been made and filed: it is ordered, that judgment by default be entered against the defendant, William A. Shaffer.

Motion to file Answer.

On Thursday morning, 24th day of April, 1851, the Court met pursuant to adjournment.

Present, as before.

J. A. SCUDDAY
v.
W. A. SCHAFFER.

In this case, on motion of defendant's counsel, it is ordered, that the judgment by default be set aside, and that he have leave to file his answer.

Answer.

JAMES A. SCUDDAY
v.
WM. A. SCHAFFER. No. 754.

Into Court by his undersigned counsel comes William A. Shaffer, defendant in the above-entitled suit, who denies all and singular the allegations and averments contained in plaintiff's petition.

In further answering, he avers that by Notarial Act passed before Voltaire Thibodeaux, Notary Public, on the 6th of January, 1847, he purchased in good faith, and for valuable consideration, of one Alexander McMaster, now a resident of the parish of Lafourche Interior, a certain tract of land with all its appurtenances, containing six hundred and twenty superficial arpents, more or less, bounded above by lands of respondent, below by lands of William J. Minor, and measuring front twelve arpents, on both sides of Bayou Little Terrebonne, in the said parish of Terrebonne, and about four miles above the town of Houma, all of which will more fully appear by a certified copy of said act, hereto annexed as part of this petition, and that his said vendor sold said land, &c., to respondent, with full and complete guarantee and warranty of title to said vendee.

That since the purchase of said land by your respondent, he has made various improvements on the same, to wit: fences, of the value of one hundred dollars, planted sugar cane thereon, worth in the stubble three hundred dollars, together with ditches, and other improvements worth three hundred dollars, all of which are well worth one thousand dollars.

He therefore prays that said Alexander McMaster be duly cited to defend his titles to said land, and that the same judgment be rendered against him that may be rendered against respondent if he should be cast in this suit. He further prays judgment in his favor on the title to said land, and that judgment be rendered in respondent's favor for his improvements, to wit: one thousand dollars, should he be cast, and he further prays for general relief in the premises.

(Signed) GEORGE R. SHIEL,
Attorney.

Filed 24th April, 1851.
(Signed) J. AYCOCK,
Clerk.

Continuance.

Monday morning, 28th day of April, 1851. Court met according to adjournment. Present as before.

J. A. SCUDDAY
v.
WM. A. SHAFFER.

It is ordered that this cause be continued.

Citation to McMaster.

The State of Louisiana.

In the name and by the authority of the District Court of the fifth Judicial District, sitting in and for the Parish of Terrebonne.

J. A. SCUDDAY,
v.
WM. A. SCHAFFER.

To Alexander McMaster, residing in the Parish of Lafourche Interior.

You are hereby summoned to comply with the demand contained in the following answer calling you in warranty, or file your answer thereto with the undersigned, Clerk of said Court, at his office, at Houma, ten days after the service hereof, adding one day for every ten miles that your residence is distant from the place of holding said Court.

[L. S.] Witness the Honorable David A. Randall, Judge of said Court, this 13th day of October, A. D. 1851.

(Signed) GR. BUDDENBROCK,
Deputy Clerk.

Return.

Received this citation, with a true copy of petition, and call in warranty and citation, on the 13th day of October, 1851, and served the same on the same day, month, and year, by delivering the said copy of petition and call in warranty and citation to A. McMaster in person, and therefore make this my return. Houma, Parish of Terrebonne, October 13th, 1851.

(Signed) A. J. DELAPORTE,
Deputy Sheriff.

Filed October 13th, 1851.

GR. BUDDENBROCK,
Deputy Clerk.

Default v. *McMaster.*

On Saturday morning, the 25th of October, 1851, Court met according to adjournment. Present as before.

J. A. SCUDDAY
v.
WM. A. SHAFFER.

In this cause, the legal delay having expired, and no answer having been filed, on motion of plaintiff's counsel, It is ordered, that judgment by default be entered against Alexander McMaster, warrantor.

Tuesday, October 5th, 1852: Court met pursuant to adjournment. Present as before.

JAMES A. SCUDDAY
v.
WILLIAM A. SHAFFER.

It is ordered that the trial of this cause be fixed for Friday next, the 8th instant.

Leave to file Amended Answer.

Friday, October 8th: Court met pursuant to adjournment. Present as before.

JAMES A. SCUDDAY
v.
WILLIAM A. SHAFFER.

The defendant, per counsel, came into Court, and after having obtained leave, filed his amended answer.

Amended Answer.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

Fifth District Court of the Parish of Terrebonne.

W. A. Shaffer, one of the defendants in the above-entitled suit, and first praying for leave to file this, his amended answer, respectfully shows:

That George R. Shiel, his attorney in said cause, made a mistake in claiming compensation for the improvements made by this respondent on the land in dispute.

That the said improvements are really of the value of two thousand five hundred dollars; and should he be evicted from said property, he prays that, as possessor in good faith, he have judgment against said James A. Scudday, in reconvention for said sum of twenty-

five hundred dollars, value of his improvements, and for general relief, and as in duty bound.

(Signed) W. A. SHAFFER.

Filed 8th October, 1851.

(Signed) A. BOURGE,
Deputy Clerk.

Leave to file Amended Answer.

On Friday, April 22d, 1853: Court met pursuant to adjournment. Present as before.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

The defendant, per counsel, came into Court, and, after having obtained leave, filed his written amended answer, suggesting the death of Alexander McMaster, the warrantor in this case.

Whereupon the Court ordered, on motion of said defendant, through his said counsel, that F. C. Ewing and Adolphe Blanchard, testamentary executors of the said McMaster, deceased, be duly served with a copy of said amended answer and call in warranty.

It is further ordered, that this case stand continued.

Supplementary Answer.

To the Honorable Fifth District Court. State of Louisiana.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

Into Court, by his undersigned counsel, comes William A. Shaffer, defendant in the above suit, and by way of supplemental answer to said petition, respectfully shows:

That Alexander McMaster, of the Parish of Lafourche Interior, warrantor, and one of the defendants in the above suit, has recently died, and that Fayette C. Ewing and Adolphe Blanchard, both of the Parish of Lafourche Interior, have been confirmed his testamentary executors.

Wherefore he prays, that the said Ewing and Blanchard, administrators as aforesaid, be duly cited to appear and defend this suit on the part of the estate of the said McMaster, and as in duty bound, &c.

CONNELLY & RIGHTER,
Attorneys for Respondent.

Filed 23d April, 1853.

(Signed) AUBIN BOURG,
Deputy Clerk.

Citation.

The State of Louisiana. District Court of the Fifth Judicial District, sitting in and for the Parish of Terrebonne.

J. A. SCUDDAY
v.
WM. A. SHAFFER. } No. 754.

To Fayette C. Erwin and Adolphe Blanchard, both residing in the Parish of Lafourche Interior, testamentary executors, duly confirmed, of the estate of Alexander McMaster, deceased.

You are hereby summoned to comply with the prayer of the petition, a true and faithful copy whereof accompanies this citation, or to file your answer thereto, in writing, with the Clerk of said Court, at his office at Houma, in ten days after the service hereof, adding one day for every ten miles your residence is distant from the place of holding said Court.

[SEAL.] Witness, the Honorable David A. Randall, Judge of said Court, this 4th day of May, A. D. 1853.

(Signed) AUBIN BOURG,
Deputy Clerk.

Return.

Received this citation, with two true copies, duly certified, of the same, and of the petition, on the 6th of May, 1853, and on the 7th of the same month and year, made service by delivering one of said copies of petition and citation to Adolphe Blanchard, in person, in the Town of Thibodeaux; and the other copies of said petition and citation I delivered to Dr. F. C. Erving, in person, in the Town of Thibodeaux, therefore I make this my return.

J. K. GOURDAIN,
Deputy Sheriff.

Filed May 11th, 1853.

AUBIN BOURG,
Deputy Clerk.

Defendant v. *Executors of McMaster.*

On Tuesday, the 21st day of June, 1853, Court met pursuant to adjournment. Present, the Honorable James L. Cole, Judge of said Court.

J. A. SCUDDAY
v.
WM. A. SHAFFER. }

The legal delay having expired, and no answer having been filed, on motion of plaintiff's counsel. It is ordered, that a judgment by default be entered against the executors of Alexander McMaster, deceased.

Saturday, June 25th, 1853. Present as before.

J. A. SCUDDAY
v.
W. A. SHAFFER.

The executors of A. McMaster, per counsel, came into Court and filed their written answer.

Whereupon, the Court ordered that the judgment, in this case, entered against them, be cancelled and annulled.

It is further ordered that this case stands continued.

Answer of Executors.

Fifth District Court of the State of Louisiana: Sitting in and for the Parish of Terrebonne.

Into Court, by their undersigned counsel, comes Fayette C. Erwing and Adolphe Blanchard, both residents of the Parish of Lafourche, and duly commissioned testamentary executors of Alexander McMaster, deceased, late of said Parish of Lafourche, who, for answer to the petition of plaintiff, in above case, and to the call in warranty made on them by William A. Shaffer, would respectfully show: that they adopt and allege all the defences set up by original defendant McMaster in the premises, and ask to be hence dismissed with costs, and for trial by jury.

(Signed) G. F. CONNELLY,
Attorney for Defendant.

Signed 25th June, 1853.

AUBIN BOURG,
Deputy Clerk.

Answer of A. McMaster.

Fifth District Court, State of Louisiana.

SCUDDAY et al.
v.
W. A. SHAFFER.

To the Honorable the Fifth Judicial District Court of the State of Louisiana: Sitting and having jurisdiction in and for the Parish of Terrebonne:

Into Court, by his undersigned counsel, comes Alexander McMaster, of the Parish of Lafourche Interior, and for answer to the petition in above case filed, as well as to the call in warranty made against him, respectfully shows:

That he denies all and singular, the allegations in said petition contained, except what may be hereinafter especially admitted.

Further answering, he says: That, on the 15th day of June, 1836, Magdeline Billio, of the Parish of Terrebonne, became the

purchaser, from the Government of the United States, of a certain tract of land, known and designated on the Surveys of the United States as lots number five and six, in Section 71, of Township No. 17, Range No. 16 East, in this Parish, for the sum of two hundred and dollars, as per receiver's receipt No. 1218; that said receipt was duly recorded in the office of the Parish Judge of that parish, on the day of June, 1836.

That your respondent purchased said tract of land from said Magdeline Billio, on the 29th day of June, 1836; and that the act of sale was duly recorded on the 30th day of June, 1836.

That your respondent, and those under him, have held continued, peaceable, quiet, and uninterrupted possession of said land ever since; that no legal proceedings have been taken by the United States Government to divest your petitioner, or his vendor, of their title to said land; and that the pretended purchase of plaintiff, in this case, has been made, not only contrary to law, but in fraud of the rights of your respondent.

Your respondent, further answering, avers, that he is possessor in good faith; that he has made valuable improvements on said lands, worth, at least, two thousand dollars; and that, in case of eviction, he has a right to demand payment of his said improvements.

Wherefore respondent respectfully prays, that he be hence dismissed with his costs, and that in case he be evicted from said land, that he have judgment against said plaintiff, James A. Scudday, for the sum of two thousand dollars, value of his improvement thereon, and for such other and further relief as the case may demand.

(Signed) CONNELLY & MERCER,
Attorneys of Defendant McMaster.

Filed 3d July, 1852.

GR. BUDDENBROCK,
Deputy Clerk.

Case continued.

On Monday, the 21st of November, 1853, Court met according to adjournment. Present, as before.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

It is ordered that this case stands continued.

Leave to Executors to file Answer.

On Tuesday, December 6th, 1853, Court met according to adjournment. Present, as above.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

Adolphe Blanchard & J. C. Erwing, executors of the estate of

Alexander McMaster, and who are called in warranty, in this case, per counsel, came into Court and filed their written answer.

Answer of Executors.

State of Louisiana, Fifth District Court, Terrebonne.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

Into Court, by their undersigned counsel, came Fayette C. Erwing and Adolphe Blanchard, residents of the Parish of Lafourche, and testamentary executors of the estate of the late Alexander McMaster, deceased, for answer to the several petitions in said case filed, would respectfully show, in addition to the facts heretofore alleged by said McMaster, that if plaintiff Scudday ever had any shadow of title to the land in dispute, it was derived from the location of a certain internal improvement land warrant, issued under the provision of an Act of Congress of date 4th September, 1841.

That said location has been cancelled and annulled by the proper officers of the Land Department of the United States.

That the land in dispute was selected, set over, and approved, to the State of Louisiana, by the Secretary of the Interior and Commissioner of the General Land Office, on the 10th of April, 1853, as swamp land; and that William A. Shaffer purchased said land, to wit, lots No. 5 and 6, in Section 71, Township 17, Range 16 East, from the State of Louisiana, on the 18th day of July, 1853, all of which will fully appear by documents to be produced on the trial of this case. Respondents aver that William A. Shaffer, by his aforesaid purchase, has quieted his own title, and that they are only responsible to him, in warranty, for his necessary expenses in so quieting his title.

Wherefore respondents pray, in addition to the prayer in the original answer, that William A. Shaffer be quieted in his title and possession of the land in dispute; that they be held responsible to said Shaffer for the costs and expenses of purchasing the land from the State; that the demand of James A. Scudday be dismissed, and that he be condemned to pay all costs of these proceedings, and for general relief.

(Signed) CONNELLY & MERCER,
Attorneys.

Filed 6th December, 1853.

J. AYCOCK,
Clerk.

Leave to file Affidavit.

Wednesday, December 7th, 1853. Pursuant to adjournment Court met. Present, as before.

JAMES A. SCUDDAY
v.
WILLIAM A. SHAFFER.

The defendant, per counsel, came into Court, and after having obtained leave, filed his affidavit for a continuance.

Whereupon the Court ordered that the case stand continued.

Affidavit.

Fifth District Court, Parish of Terrebonne, State of Louisiana.

Into court comes G. F. Connelly, attorney at law, of counsel for W. A. Shaffer, defendant in the above case, and also counsel for J. C. Erwing and Adolphe Blanchard, testamentary executors of the last will of Alexander McMaster, deceased, and as under oath declares, that on or about the 25th of July, last past, William A. Shaffer informed him that he had bought from the State of Louisiana, through William H. Crenshaw, register of the land office at Baton Rouge, lots five and six, of Southeast quarter of section seventy-one, township seventeen, range sixteen east, and that he, Shaffer, wished deponent to plead said purchase in bar of the action instituted by James A. Scudday against him; that deponent informed said Shaffer, that in order successfully to avail himself of said plea, he show that the purchase and location under which said Scudday claimed, had been annulled and set aside, and that the decision of the Secretary of the Interior, setting aside the location of said Scudday, and confirming said land to the State, as belonging to her under the act of Congress of 2d March 1849, and commonly known as the Swamp Act, would be the best evidence to establish said forth.

Whereupon, said Shaffer requested deponent, as his attorney, to take the necessary steps to obtain said testimony. That immediately thereafter, to wit, about the first week in August, deponent addressed a letter to Wm. H. Crenshaw, register of the land office at Baton Rouge, requesting him to furnish him with a copy of the decision of the Secretary of the Interior, setting aside the location made by said Scudday, explaining that it was the location of an internal improvement warrant, issued under the provisions of an act of Congress, under date of 4th September, 1841. That after waiting a reasonable time, say about two weeks, without receiving an answer, he addressed a letter to N. Carrigan, Esquire, requesting him to act as agent of deponent, to procure the desired documents, and suggesting that they might perhaps be found in the office of the Governor of the State; that he received from said Carrigan, about the end of September, a letter, saying that the Governor, as well as the register of the land office, were absent from the seat of Government, and that he had been unable to procure the documents required.

That immediately thereafter, to wit, about the first day of October, deponent addressed a letter to John Wilson, commissioner of the general land office at Washington City, requesting to forward to him a copy of the decision of the Secretary of the Interior: the location and selection of lots five and six, township seventeen, section seventy-one, range sixteen east, by the State of Louisiana, through James A. Scudday, and also a copy of the approval of said land, to the State of Louisiana, under the Swamp Land Act of 2d March, 1849, and including five dollars to pay the necessary expenses of procuring said copies. That after a reasonable time, say some four or five weeks, without receiving any answer, he again wrote to said commissioner, also to the register of the land office at Baton Rouge, and to Louis Palmer, register of the United States land office at New Orleans, reiterating his request; that he has as yet received no response from the two first-mentioned parties; that he received a few days ago a letter from the register of the said office at New Orleans, including a copy of a letter from the commissioner of the general land office to him, informing him that the location and selection of the State, of the aforesaid lots five and six, section seventy-one, township seventeen, range sixteen, by the State of Louisiana, under the act of 9th September, 1841, had been set aside, and the land confirmed to the State, under the act of Congress of 2d March, 1849. Deponent avers that he has used every possible exertion to procure a copy of the decision of the Secretary of the Interior, above referred to, but without *above;* that defendants cannot safely go to trial without said evidence, and that F. C. Erwing and Adolphe Blanchard do not reside in that parish of Terrebonne.

As deponent did not keep memorandums of the dates of the several letters, he cannot say positively the days on which they were written, but that his statement of dates is substantially correct.

(Signed) C. F. CONNELLY.

Sworn to and subscribed to before me, this 7th December, 1853.

(Signed) J. AYCOCK,
Clerk.

Filed, 7th December, 1853.

(Signed,) J. AYCOCK,
Clerk.

Court adjourned "Sine Die," December 17th, 1853.

(Signed) JAMES LAWRENCE COLE,
Judge, Fifth Judicial District Court.

Certified. (Signed) J. AYCOCK,
Clerk.

Case Continued.

On Monday morning, February 20th, 1854, Court met, pursuant to adjournment. Present as before.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

It is ordered that this case stand continued.

Court adjourned "Sine die," February 21st, 1854.

(Signed) JAMES LAWRENCE COLE,
Judge, Fifth Judicial District.

Certified. (Signed) J. AYCOCK,
Clerk.

Assignment, 754.

Monday, May 8th, 1854, Court met pursuant to adjournment. Present as before.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

It is ordered that the trial of this cause be fixed for Monday next, the 15th instant.

Taken up, 754.

Wednesday, May 17th, 1854, Court met pursuant to adjournment. Present as before.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

This case was this day taken up. (The question of improvements is reserved for future adjudication.

Testimony.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

Testimony taken down on the trial of the case.

Plaintiff's Testimony.

Certificate of Charles Fitz—Register marked A.

The agreement of Counsel, marked B.

Certificate of Ratification of entry, marked C.

Patent, marked D.

Plaintiff's testimony closed.

Defendant's Testimony.

Statement of defendant, marked E, which is received, although it had been sworn to and signed by consent of parties.

Copy of land receipt, marked F.

Certified copy of Act of sale of Magdeline Billio to Alexander McMaster, marked G.

Certified copy of Act of sale from McMaster to Shaffer, marked H.

Opinion of the Secretary of Interior, marked I.

Certified list of overflowed lands in Louisiana, marked J.

Certificate of the Register of Land Office at Baton Rouge, marked K.

Wood's Testimony.

J. F. Wood, sworn. He is acquainted with the land in dispute. Witness has been overseeing on Mr. Shaffer's place since the year 1847, with the exception of the year 1851—defendant has been in the possession of the land since the witness first commenced overseeing for him, and has been cultivating portions of the land ever since; witness knows McMaster, being in possession of the land, and was in possession of it in 1839, and had a part of it under fence and cleared at that time.

Cross-examined.

A considerable portion of this land may be considered high land at this time, but when he first knew it, it was very low, and water on it; he rode through it himself, and the water reached nearly to his horse's belly; he supposes that nearly half of the land now may be considered high land, since it has been ditched.

In chief renewed.

The reason why the land is higher now, is owing to the ditching that has been done by Mr. Shaffer. Defendant's testimony closed.

Plaintiff's rebutting testimony.

Documents from J. Butterfield, Commissioner to Register Land Office, New Orleans, marked I.

Certificate of Charles Fitz. Register, marked A.

LAND OFFICE, NEW ORLEANS, 12th July, 1850.

It is hereby certified that in pursuance to law, James Augustus Scudday this day located a warrant, No. 580, for three hundred and twenty acres of land, issued by the State of Louisiana, under the 8th section of the Act of 4th September, 1841, on the lots number 5 and 6, being the southeast quarter of Section number 71, in Township number 17, of range number 16, containing one hundred and six, one 52-100 acres, taken in satisfaction of the aforesaid warrant.

(Signed) CHARLES FITZ,
Register.

Agreement of Counsel, marked B.

We the undersigned, attorneys of J. A. Scudday and A. Laforest, of one part, and W. A. Shaffer of the other part, agree that copies of the approval of lands, under the Acts of 1841, 1849, and 1851, as on file in the land office in New Orleans, may be taken by the parties

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respectively, and shall have the same effect as certified copies of those approvals from the Land Office in Washington City, on the trial of the suit now pending between them.

March 7th, 1854.

(Signed) J. C. & A. BEATTY,
CONNOLLY & RIGHTER,

Filed 17th May, 1854.

(Signed) A. BOURG,
Deputy Clerk.

Certificate of Ratification of Entry. Marked C.

LAND OFFICE, NEW ORLEANS, 14th October, 1850.

It is hereby certified, in pursuance of law, that the location made at this office, on the 12th July, 1850, by James A. Scudday, of a warrant, No. 580, for three hundred and twenty acres of land, issued by the State of Louisiana, under the provisions of the 8th Section of the Act of Congress "Entitled" An Act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights, approved on the 4th September, 1841, which location was made on the lots Nos. 5 and 6, being the southeast quarter of section No. 71, of Township No. 17, of range No. 16, containing one hundred and sixty-one 52-100 acres, taken in satisfaction of the aforesaid warrant, as per list of selections No. 34, has been approved by the Secretary of the Interior, of which fact this office has been notified by the Commissioners of the General Land Office, per letter bearing date the 11th September, 1850.

In testimony whereof, I, Charles Fitz, Register of the Land Office for the district of lands subject to sale at New Orleans, have hereunto subscribed my name, on the day and year above written.

(Signed) CHARLES FITZ,
Register.

Filed 8th April, 1851.

(Signed) GR. BUDDENBROCK,
Clerk.

Filed 17th May, 1854.

(Signed) A. BOURG,
Clerk.

Patent, marked D.

The United States of America, State of Louisiana.

Justice, Union, and Confidence.

Whereas, James A. Scudday, in the State of Louisiana, has exhibited and deposited in the State Land Office, a certificate from the Register of the United States Land Office at New Orleans, from which it appears that the said James Scudday has located under land warrant No. 580, issued by the State of Louisiana, the following designated land: lots five and six, being the southeast quarter of section No. seventy-one, in Township No. 17, of range No. 16

east, containing one hundred and sixty-one and fifty-two one hundreds acres, according to the official plot of the survey of the said land, returned to the United States Land Office, by the Surveyor of the United States, for the State of Louisiana, which said tract has been duly located, and location approved by the Secretary of the Interior, and is on the list No. 34, on file in the Land Office of Louisiana.

Now know ye, that the State of Louisiana, in consideration of the premises, and in conformity with law, have given and granted, and by these presents give and grant, unto the said James A. Scudday, and to his heirs and assigns, the said tract above described.

To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, to the said James A. Scudday, his heirs or assigns forever.

In testimony whereof I, Joseph Walker, Governor of the State of Louisiana, have caused these letters to be made patent, and the seals of the Land Office of the State of Louisiana to be thereunto affixed.

[SEAL.] Given under my hand, at the City of Baton Rouge, this 12th day of November, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States the seventy-seventh.

(Signed) JOSEPH WALKER.

(Signed) R. H. CRENSHAW,
Register of the Land Office.

Record of Patents, vol. 1, page 207.
Filed 17th May, 1854.

(Signed) A. BOURGE,
Deputy Clerk.

Statement of Defendant, marked E.

J. A. SCUDDAY
v.
WM. A. SHAFFER.

Wm. A. Shaffer, defendant in above case, as under oath, declares, that when the act of sale by which the land in dispute was purchased from Alexander M'Master was passed, said M'Master did not have present with him this receipt, whereby his vendor, Magdeline Billiot, who purchased the same from the United States Government, said receipt is correctly described, as follows:

Original, No. 1218.

Receiver's Office, Southeastern District, Louisiana.

NEW ORLEANS, June 18th, 1836.

Received from Magdeline Billio, of the Parish of Terrebonne, the sum of two hundred and one 90-100 dollars, being in full of this purchase-money of her pre-emption right, in virtue of the Act of

Congress, approved 19th June, 1834, and entitled "An Act to revive an Act entitled An Act to grant pre-emption rights to settlers on public lands," approved on the 29th May, 1830, to certain tracts of land, situated in Township No. 17 of range No. 16, designated as being section No. 71, being lots 5 and 6, containing one hundred and twenty-one 52-100 superficial acres, at one dollar and twenty-five cents, numbered 1218.

(Signed) MAURICE CANNON,
Receiver of Public Moneys.

That afterwards this deponent called on said M'Master, and demanded of him to deliver to him said receipt, when he at first said that he had left said receipt at Mr. Marchai's, at Thibodeaux, but afterwards said M'Master recollected that he had taken said receipt back from said Marchais, and that the same had been burnt and destroyed in the year 1849, together with many others of his papers, at a time when a house which he occupied, on the plantation of J. M. Felton, in this parish, was burnt and destroyed; that Alexander M'Master is since dead, and from all the circumstances he is fully satisfied that said receipt has been burnt and destroyed.

Filed 17th May, 1854.

(Signed) A. BOURG,
Deputy Clerk.

Copy of Land Receipt, marked F.

Receiver's Office, Southeastern District, Louisiana.

New Orleans, June 18th, 1835.

Received from Madeleine Billiot, of the Parish of Terrebonne, the sum of two hundred and one 90-100 dollars, being in full of the purchase-money of her pre-emption right, in virtue of the Act of Congress, approved 19th June, 1834, and entitled an Act to revive an Act, entitled, "An Act to grant pre-emption rights to settlers on public lands," approved on the 29th May, 1830, to certain tracts of land, situate in Township No. 17 of Range No. 16, designated as being section No. 71, being lots 5 and 6, containing one hundred and sixty-one 52-100 superficial acres, at one dollar and twenty-five cents, numbered 1218.

(Signed) MAURICE CANNON,
Receiver of Public Moneys.

Recorded this 20th day of July, 1836.

(Signed) L. BARRAS,
Judge.

The State of Louisiana, Parish of Terrebonne.

I, the undersigned Parish Recorder, and ex-officio a Notary Public, duly commissioned and qualified, in and for the said parish and state, do hereby certify that the foregoing is a true and faithful copy of the original on record in my office at Houma, Parish of Terrebonne.

Witness my hand and the impress of my seal this 13th May, A.D. 1854.

(Signed) J. A. LE BLANC,
Recorder.

Filed 17th May, 1854.

(Signed) A. BOURG,
Clerk.

Certified Copy of Sale. M. Billiot to M'Master, marked G.

For value received, I, Magdeleine Billiot, of the Parish of Terrebonne, Louisiana, do hereby transfer and assign and set over unto Alexander M'Master, of the Parish of Terrebonne, State of Louisiana, all my rights, title, claim, and demand to certain tracts of land purchased by me on the eighteenth of June, eighteen hundred and thirty-six, as per receiver's receipt, No. 1218, designated as lots Nos. 5 and 6, section No. 71, of range 16 east, situated in the district of lands subject to sale at New Orleans, and request that a patent may be issued to said Alexander M'Master, his heirs or assigns. Witness my hand this 29th July, 1836.

(Signed) MAGDELEINE BILLIOT.
X her mark.

Witness,

JOHN BILLIOT,
X his mark.

Witness,

M. BELLANGER.

Acknowledged before me this 29th July, 1836.

(Signed) R. H. GRINAGE, [L. S.]
J. P.

Recorded this 30th day of July, 1836.

(Signed) L. BARRAS,
Judge.

State of Louisiana, Parish of Terrebonne.

I, the undersigned Recorder (*archivesto*), and ex-officio a Notary Public, in and for the Parish of Terrebonne, and State aforesaid, duly commissioned and qualified, do hereby certify the foregoing to be a true and faithful copy from the original act on record in my office.

[L. S.] Witness my hand and the impress of my seal of office, at Houma, this 4th day of October, A. D. 1851.

(Signed) A. VERRET,
Recorder.

Filed 6th October, 1851.

(Signed) GR. BUDDENBROCK,
D'y Clerk.

1002

Filed 17th May, 1854.
(Signed) AUBIN BOURG,
D'y Clerk.

Copy of Sale. A. McMaster to Shaffer. Marked H.

State of Louisiana, Parish of Terrebonne.

Be it known, that on this sixth day of January, eighteen hundred and forty-seven,

Before me, Voltaire Thibodeaux, Recorder, and ex-officio a Notary Public, in and for the Parish of Terrebonne, State of Louisiana, duly commissioned and sworn, in the presence of the witnesses hereafter named and undersigned.

Personally came and appeared Mr. Alexander McMaster, of the Parish of Terrebonne, who declared that he has sold, and does by these presents sell and transfer, assign, set over, and deliver, with with full guarantee against all troubles, debts, donations, evictions, substitutions, and all other incumbrances whatsoever, to and unto Mr. William A. Shaffer, also of this parish, here present and accepting, purchasing for himself, his heirs and assigns, and acknowledging possession and delivery thereof.

A certain tract of land situate in this parish, on both sides of Bayou Little Terrebonne, at about four miles above the town of Houma—containing about twelve arpents front, more or less, on both sides of said Bayou, with the depth of survey—containing about six hundred and twenty superficial arpents, more or less—bounded above by land of purchaser, and below by that of William J. Winsi, with all the improvements and appurtenances thereon, without reserve—also, seven head of mules, and about forty head of cattle, appertaining and attached to said place.

To have and to hold the said land and appurtenances thereon to the said purchaser, his heirs and assigns, to their proper use and behoof forever; and the said seller, for himself and his heirs, the said land, to the said purchaser, shall and will warrant, and forever defend, against the lawful claims of all persons whomsoever, by these presents; and the said vendor does, moreover, subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor, fully authorizing said purchaser to exercise said rights and actions in the same manner as he himself might or could have done.

Said sale is under the following considerations and conditions, to wit:

For the sum of nine thousand and seventy-nine dollars and fifty cents, payable as follows, viz.: three thousand two hundred and seventy-four dollars and sixty-eight cents, paid in ready money, out of my presence, the receipt whereof is hereby acknowledged by the said vendor—one thousand two hundred and sixty-five dollars and seven cents, in March, eighteen hundred and forty-seven, and four thousand five hundred and thirty-nine dollars and seventy-five cents, in

March, eighteen hundred and forty-eight—which last sum of four thousand five hundred and thirty-nine dollars and seventy-five cents, bears interest at the rate of eight per cent. per annum, from the first March, 1846, until paid. For which aforesaid sums, the said William A. Shaffer has executed and subscribed the two several notes payable to the order of Mr. Alexander McMaster, bearing date of this act—the one for the sum of one thousand two hundred and sixty-five dollars and seven cents, payable in March, 1847, and the other for the sum of four thousand five hundred and thirty-nine dollars and seventy-five cents, payable in March, eighteen hundred and forty-eight, with interest at eight per cent. per annum on the last note, from the first March, 1846, till paid—which notes, after having been paraphed "ne varietur," and signed by me, said recorder, in order to identify them with the act, I have delivered to said vendor, who acknowledged the receipt thereof.

Now in order to secure the payment of the said notes, the said vendor retains, and the purchaser agrees to give a special mortgage on said land and appurtenances until final payment.

The certificate of mortgages required by article 3328 of the Civil Code of Louisiana, is dispensed with by the parties, and I, the said Recorder, am free from all responsibility resulting from the non-production thereof.

It is agreed between the parties that Mr. Alexander McMaster is bound to have the following mortgages, to wit: a mortgage to the Union Bank for the sum of two hundred and fifty dollars, and a mortgage to Alfred Millard, for about the sum of seven hundred dollars, erased and annulled.

It is understood between the parties that William J. Minor has a claim on the land before described and sold, which is to be delivered on the lower line of said tract, in accordance with a plat of survey made by James B. Grenage, on the 10th of September, 1846.

Thus done and passed at my office at Houma, in said Parish of Terrebonne, the day, month and year above written, in presence of Messrs. Joseph Aycock and Thomas P. Moore, good and competent witnesses, who sign these presents with the parties and me, the said Recorder, after the reading thereof.

(Signed) A. McMASTER, WM. SHAFFER,
J. AYCOCK, THOS. P. MOORE.
(Signed) V. THIBODEAUX,
Recorder.

State of Louisiana, Parish of Terrebonne.

I, the undersigned Recorder, and ex officio a Notary Public in the same, do hereby certify the foregoing to be a true and faithful copy from the original act on record in my office.

[SEAL.] Witness my hand and the impress of my seal of office at Houma, October 6th, A.D. 1854.

(Signed) A. VERRET,
Recorder.

Filed 6th October, 1851.

(Signed) GR. BUDDENBROCK,
Dy. Clerk.

Filed 17th May, 1854.

(Signed) A. BOURG,
Dy. Clerk.

Opinion of the Secretary of the Interior, marked I.

DEPARTMENT OF THE INTERIOR, WASHINGTON, December 23d, 1851.

Sir:—I have carefully reviewed my affirmance of your decision in regard to the proper construction of the act of the 2d March, 1849, and 28th of September, 1850, granting to the several States of the Union the swamp and overflowed public lands within their respective limits, and am satisfied that the decision heretofore made was incorrect.

The first question involved in the case is, as to the periods when the grants take effect; whether it be the date of the law or the date of the approval of the selections by the Secretary of the Interior; or the issuing of the patent to the State. The language of the first section of the act of March 2d, 1849, is as follows, namely: "That the aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands, which may be or are found unfit for cultivation, shall be and the same are hereby granted to that State;" and the first section of the act of the 28th September, 1850, is in language almost identical. The act of 1849, in regard to the State of Louisiana, declares that the fee simple in said lands shall vest in the State upon the approval of the Secretary of the Interior, and the general law of September, 1850, enacts that the fee shall vest in the State upon the issuing of a patent. In each case, the granting clause is in the first section, and the words employed, viz.: "are hereby granted," seem to me to impart a grant in present. They confer the right to lands through other proceedings, and are necessary to perfect the title, when the selections are made and approved, or the patent issued; the title thereby becomes perfect, and has relation back to the date of the grant.

The second question is, whether it is proper and competent to approve or patent portions of lands selected as they may from time to time be reported, or whether the whole of the lands to which a State may be entitled must first be designated.

I do not conceive that, because the language of the law respecting the lists of the lands and the patents of the States is in the singular, it is inconsistent with the law to approve or patent lists of the lands, as they may be from time to time be submitted for that purpose; and looking to the convenience and important interests of the States, which might be seriously injured by any other course, I think this ought to be done.

To these points my attention has recently been called by the Governor of Louisiana, but they present questions involving the interests of all the States affected by the grant.

The Governor of Alabama has also addressed the Department on another point, which has reference to the mode of executing the law of September, 1850, and which presents the question, whether the provisions of the Act of 2d March, 1849, and 28th of September, 1850, are to be construed in pari materia, thereby requiring that the selections shall be made by the States, as was the case with the Louisiana grant, and not by the General Government. This question I decide in the negative. The Act of March, 1849, had reference to Louisiana alone, and required that the selections should be made under the directions of the Surveyor-General, at the expense of the State of Louisiana entirely, and after the Governor of that State should have informed the Secretary of the Treasury that the necessary preparations to defray those expenses had been made by the State. The provision in the Act of September, 1850, is entirely different; for it makes it the duty of the Secretary of the Interior to make out lists and plats of the land thereby granted, and to transmit the same to the Governor of the States, and, when so requested by them, to cause patents to be issued to the States for said lands. It follows, therefore, that while the selections in Louisiana are to be made under the direction of the Surveyor-General, at the expense of the State, those in Arkansas and the other States are to be made by the Secretary of the Interior, at the expense of the United States.

As the grants are regarded as taking effect from the dates of the laws making them respectively, and as vesting the inchoate title in the States, it follows, that any subsequent sale or location of swamp or overflowed lands might be held to be illegal, and the purchase-money refunded, or a change of location ordered; subsequent entries, however, which have been made by pre-emption, in virtue of settlements made prior to the grants, will be valid, because in those cases the right of pre-emption attached from the date of settlement, and became a vested right, which can be divested only by abandonment, or a failure in the performance of its conditions.

I have to request that you will communicate copies of this decision to the Governors of Louisiana and Alabama (whose letters are herewith referred to you) as soon as possible, and that you will modify your instructions and conform your actions to the views herein expressed. I am, sir, very respectfully,

Your obedient servant,

(Signed) ALEX. H. H. STEWART,
Secretary.

To Commissioner of the General Land Office.

GENERAL LAND OFFICE, October 4th, 1853.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing is a correct copy of the decision of the Honorable Secretary of the Interior, of December 23d, 1851,

in reference to the proper construction of the Acts of 2d March, 1849, and 28th of September, 1850; taken from the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused to be affixed the seal of this Office, at the City of Washington, on the day and year first above written.

[SEAL.]

(Signed) JOHN WILSON,
Commissioner.

Filed 17th May, 1854.

(Signed) A. BOURG,
Deputy Clerk.

Certified List of Overflowed Lands in Louisiana, marked J. Part of List, No. 1, E.

Description of the Tracts.	Section.	Township.	Range.	Acres.	Hund'ths.	Remarks.
East of Mississippi R.						
S. E. ¼ of S. E. ¼,	10	14	15 E.	40	00	List 27 approved.
Lot No. 1, of	3	11	7 E.	40	14	" 40 "
N. ½ of N. E. ¼,	5	"	"	80	22	Not approved.
The whole of	10	"	"	24	85	List 34 approved.
Lot No. 2, of	11	"	"	28	90	" 34 "
The whole of	14	"	"	222	86	" 34 "
"	96	"	"	336	07	" 34 "
"	97	"	"	212	85	" 35 "
"	19	11	8 E.	535	61	" 26 "
Lots No. 2, of	29	"	"	59	50	Not approved.
Lots 2 & S. E. ¼ of S. E. ¼	30	"	"	81	93	List 27 approved.
The whole of	96	11	7 E.	63	32	" 35 "
W. ½ of N. E. ¼	31	11	8 E.	327	19	" 27 "
W. of Mississippi River,						
The whole of	21	11	13 E.	642	36	List, No. 34, not approved.
"	22	"	"	645	20	
"	23	"	"	638	60	
"	26	"	"	642	40	
"	27	"	"	640	66	
"	28	"	"	635	71	
"	33	"	"	625	30	
"	34	"	"	349	34	
"	35	"	"	469	98	
S. E. ¼ & S. E. ¼ S. W. ¼	19	14	17 E.	200	22	List, No. 33, approved.
The whole of	20	"	"	643	40	
S. W. ¼	21	"	"	160	70	
The whole of	30	"	"	166	26	
Lot No. 1, of	48	17	15 E.	130	33	List, No. 34, approved.
S. E. ¼	71	17	16 E.	161	52	
The whole of	3	13	19 E.	601	36	
E. ½ of S. W. ¼	4	"	"	80	00	
The whole of	12	"	"	500	76	Not approved.
W. ½ of N. W. ¼, & N. E. ¼ of N. W. ¼,	10	"	"	119	85	
	102	14	16 E.	171	50	
Total area,	-	-	-	10,278	89	

LAND OFFICE, April 17th, 1853.

Respectfully submitted for approval.

(Signed) JOHN WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR, April 14th, 1853.

The approval under Act of 4th September, 1841, is revoked, and the lands are hereby approved to the State of Louisiana, under the Act of the 2d March, 1849, subject to any valid legal rights existing thereto.

(Signed) B. M'CLELLAND,
Secretary.

GENERAL LAND OFFICE, March 2d, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify, that the foregoing is a correct copy of part List No. 1, east, of swamp and overflowed lands selected as enuring to the State of Louisiana, under the Act of March 2d, 1849, in the New Orleans District, Louisiana, which were selected under the Act of 4th September, 1841, since the passage of first-mentioned act, taken from the original on file in this office, which was on the 14th April, 1852, approved by the Secretary of the Interior.

In testimony whereof, I have hereunto subscribed my [L. S.] name, and caused to be affixed the seal of this office, at the City of Washington, on the day and year above written.

(Signed) JOHN WILSON,
Commissioner.

Filed 17th May, 1854.

(Signed) AUBIN BOURG,
Deputy Clerk.

Swamp Land Warrant, marked K.

LAND OFFICE OF LOUISIANA, BATON ROUGE, July 18th, 1854.

I, W. H. Crenshaw, register of the land office of the State of Louisiana, do hereby certify, that William A. Shaffer has this day located swamp land warrant Number one, for preference right, issued by the State of Louisiana under the provisions of an Act of the Legislature, approved 17th March, 1852, upon the following designated lands, to wit: lots five and six of section seventy-one, claimed under preference right, No. 87, in Township No. 17, of range 16 east, in the southeastern, west of Mississippi District of Louisiana, containing one hundred and sixty-one fifty-two one-hundredths acres, according to official survey of said township on file in this office.

The above location is made subject to any right of preference which existed on the 16th day of March, 1853.

Given under my hand and seal of office this 18th day of [L. S.] July, 1853.

(Signed) W. H. CRENSHAW,
Register.

State of Louisiana, Parish of Terrebonne.

The undersigned, parish recorder and ex-officio a notary public, in and for the aforesaid parish and state, duly commissioned and qualified, do hereby certify that the within receipt has been duly recorded in my office, on the 28th of July, 1853.

Book P, No. 7154.

[L. S.] Witness my hand and the seal of office at Houma, this 28th day of July, 1853.

(Signed) A. VERRET,
Recorder.

Filed 17th May, 1854. (Signed) A. BOURG,
Deputy Clerk.

Document L.

GENERAL LAND OFFICE, July 30th, 1849.

Sir,—I have the honor to transmit you Abstract No. 41, embracing eighty cases of suspended entries, which have been adjudicated by me, forty-two of which have been placed in the first class, and thirty-eight in the second class, under the Act of August, 1846, entitled, An Act providing for the adjustment of all suspended pre-emption land claims in the several states and territories.

Of the above eighty cases, thirty-eight are by pre-emption, viz., fifteen in the Tallahasse District, Florida; seventeen in the New Orleans District, Louisiana; three in St. Louis, and four in the Jackson District, Missouri; and forty-two are private entries, viz., thirty-six in the St. Louis, Missouri, and six in the Mineral Point District, Wisconsin.

Of the above pre-emption entries, the three St. Louis and four Jackson entries are in the "first class," and the fifteen Tallahasse and sixteen New Orleans have been placed in the second class.

Accompanying the Abstract will be found the proof in the pre-emption cases, the certificates of all the entries, and the assignments belonging to those noted as assigned, together with a report made to me with reference to the causes of suspension. The abstract and papers are sent for the action of yourself and the Attorney-General, as prescribed by the first section of the Act of the 3d August, 1846, before referred to.

Of the private entries, thirty-five of St. Louis cases have been placed in the "first class," and one of the St. Louis and six in the Mineral Point entries have been placed in the "second class."

With much respect your obedient servant,

(Signed) J. BUTTERFIELD,
Commissioner.

HON. T. ERWING,
Secretary of the Interior.

Abstract No. 14.

Of suspended entries adjudicated by the Commissioners of the General Land Office, under the act entitled "An act for the adjustment of all suspended land claims in the several States and Territories," approved on the third day of August, one thousand eight hundred and forty-six.

District where the entry was made.	Number of Certificate.	Name of the Purchaser.	Name of the Assignee.	Part of Section.	Section.	Township.	Range.	Date under which the pre-emptory was made.	Cause of Suspension.
New Orleans, La.	1076	Miss Thibodeaux	None	S. E. ¼	102	14	16 E.	3d Section of Act of 19th June, 1834.	See report herewith.
	1202	Ft. Locroron	"	lot or	1	17	15		
	1203	Hyp'to Guillot	"	S. E. ¼	23	14	17		
	1204	J. B. Navarre	"	N. W. ¼	21	14	17 E.	3d Section of Act of 19th June, 1834.	
	1200	C. Guillot, widow of Revere	"	S. E. ¼	20	14	17 E.		
	1210	Louis Rodriques	"	S. W. ¼	20	14	17 E.		
	1211	Evariste Navarre	"	S. E. ¼	19	14	17 E.		
	1212	F. Marie Navarre	"	N. E. ¼	20	14	17 E.		
	1213	Widow of J. B. Jansen	"	N. W. ¼	20	14	17 E.		
	1216	Philemon Guidry	"	lots 1 & 2 of	30	14	17 E.		
	1218	Magdeleine Billiot	"	lots 5 & 6 of	71	17	16 E.		
	1220	Jean C. Guidry	"	lots 1 & 2 of	75	5	8 E.		
	1221	J. B. Bergeron	"	N. E. ¼	76	5	8 E.		
	1226	Jh. Chassapiere	"	S. E. ¼	76	5	8 E.		
	1222	Hy'pte Chiasson	"	N. W. ¼	76	5	8 E.		
	1224	Jh. Chiasson	"	S. W. ¼	76	5	8 E.		

GENERAL LAND OFFICE, July 30th, 1849.

I have examined the foregoing (80) eighty cases of suspended entry, viz., fifteen Tallahasse entries; sixteen New Orleans entries; thirty-nine St. Louis entries; and four Jackson (Missouri) entries; thirty-eight of said entries being founded upon alleged rights of pre-emption, and the remainder, forty-two, upon ordinary purchase at private sale; and I have adjudged that the fifteen cases at the Tallahasse Land Office, the sixteen cases at New Orleans Land Office, the six cases at the Mineral Point Land Office, in the name of Nathaniel J. Taylor, shall be placed in the second class of claims under the Act of the 3d of August, 1846, and the remaining St. Louis cases, and in the four Jackson, Mo., cases, patents shall issue to the respective purchasers, or their assigns, where the same are unknown.

The cases in this abstract are embraced by the 3d August, 1846, hereinbefore referred to, and are within the rules and regulations made under the authority of said act. In this adjudication, it is expressly understood that if the present possession by a bona fide assignee of any of the land in any of the Tallahasse entries should be renewed prior to the 3d of August, 1846, that this adjudication, adverse to said entry, shall be reserved, and such case be placed on the "first class."

(Signed) J. BUTTERFIELD,
Commissioner General Land Office.

Approved 30th July, 1849.
(Signed) J. ERWING,
Secretary Interior.

Approved 30th July, 1849.
(Signed) BEVERLY JOHNSON,
Attorney-General.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, August 1st, 1849.

Sir:

Abstract No. 41, under the Act of the 3d of August, 1846, and the papers connected therewith, which were submitted with your letter of 30th ultimo, and herewith returned with my approval and that of the Attorney-General thereon.

I am, sir, very respectfully,
Your obdt. sert.,
J. ERWING,
Secretary.

The Commissioner of the General Land Office.

GENERAL LAND OFFICE, August 3d, 1849.

Gentlemen:

I herewith inclose a list of sixteen entries, made at your office, under the third section of the Act of the 19th June, 1834, as alleged, which certain entries have always been regarded by this office as fraudulent, and which having been adjudicated by me under the Act of 3d August, 1846, have been placed in the 2d class under said act.

The adjudication so made, having been approved by the Secretary of the Interior and the Attorney-General, the land included in said entries has, ipso facto, reverted to and become a part of the public domain, and you are required to note your books and plats so as to indicate this fact.

The land, never been offered at public sale, is of course not subject to ordinary private entry, and instructions will shortly be given in reference to the disposition to be made thereof.

Notice will be given to the parties, if possible, so that they may make the usual application for the return of their purchase-money.

Respectfully,

Your obedient servant,

(Signed) J. BUTTERFIELD,
Commissioner.

Register and Receiver, New Orleans, Louisiana.

General Land Office, 17th August, 1853.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the foregoing six (6) pages are truly copied from the files and records of this office.

In testimony whereof, I have hereunto subscribed my [L. S.] name, and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) JOHN WILSON,
Commissioner of the General Land Office.

Filed 31st August, 1853.

(Signed) AUBIN BOURG,
Deputy Clerk.

Testimony closed.

(Signed) J. AYCOCK,
Clerk.

Filed 17th May, 1854.

A. AYCOCK,
Clerk.

Submitted.

And after evidence adduced, and argument of counsel, the case was submitted to the Court for consideration.

Court adjourned "sine die," May 25th, 1854.

(Signed) JAMES LAWRENCE COLE.

Certified.

(Signed) A. AYCOCK,
Clerk.

Opinion of the Court.

Saturday, June 24th, 1854, Court met pursuant to adjournment.

Present as before.

Fifth District Court of the State of Louisiana.

SCUDDAY et al.
v.
WILLIAM A. SHAFFER.

The plaintiff sues for lots Nos. 5 and 6, being the southeast quarter of Section 71, in Township 17, of Range 16; containing 161 and 52–100 acres, more or less, acquired by location of a warrant No. 580, for 320 acres of land, issued by the State of Louisiana; he abandoned the balance due by warrant, so as to locate it as above.

William A. Shaffer, in his answer, sets up general denial, and calls on vendor McMaster, who avers that he purchased it from one Billiot, who acquired it from the United States. McMaster having deceased, his executors further set up, that the plaintiff's title, if any, was derived from the location of a certain internal improvement warrant, issued under the provisions of the Act of Congress of 4th September, 1841. That said location has been cancelled and annulled by the proper officers of the Land Department of the United States. That the land in dispute was selected, set over, and approved to the State of Louisiana, by the Secretary of the Interior, and Commissioner of the General Office, on the 16th April, 1853, as swamp land; and that Shaffer purchased said land from the State of Louisiana, on the 18th July, 1853.

The entry of Billiot was cancelled, so that defendants rely on the defence set up by the executors.

Before entering on the argument, it is necessary to allude to few laws: On the 4th of September, 1841, Congress passed the Internal Improvement Law, giving for certain purposes 500,000 acres of land to Louisiana; on the 2d March, 1849, Congress passed the law, donating to the *the* State the swamp and overflowed lands, which was extended to certain other States, by act of Congress, the 28th September, 1850. The Legislature of Louisiana, in 1850, ordered the selection of the lands covered by the grants of 1849 and 1850; many of the lands selected after the act of 1841 were selected after the act of 1849 was passed, and the land in dispute is one of them.

The act of the Legislature of Louisiana of 1850, gave a preference to entering these swamp lands, and overflowed lands, for one year, to those in possession of, or cultivating them. The time of entering by those having a preference, was extended beyond the year 1853, which act is still in force; the lots in dispute were selected as swamp or overflowed lands by the proper officers, under the act of 1850.

Having thus alluded to the laws relating to the subject, we will now proceed to the main point in this suit, on the solution of which depends the success or failure of plaintiff, to wit:

Whether internal improvement warrants can be located on swamp or overflowed lands. The Court is of opinion, they cannot; and the

plaintiff must fail in this suit. A part of the public domain has been donated for one purpose, and another part for another object. When a donation is made for a particular purpose, the reason of the grant is, that Congress supposes that the execution of that object will be of utility to the State; and when the State accepts the donation, it submits to the obligation of effecting the will of the donor. Duty, honor, and the character of the Commonwealth require that the State should faithfully execute the intent of the donor, and it has no right or property in the subject of the donation, which vests the power of disposing of it for any other than the object of the donation.

Although in the Swamp Land Bill, the State is the donee, yet the donation de facto is intended for the particular benefit of certain parts of the State, and the citizens where the swamp or overflowed lands lie are justly entitled to have the funds of the swamp lands devoted to the object of the donation. If internal improvement warrants are located on swamp land, the fund of the latter is diminished to that amount; and if swamp land warrants are located on internal improvement lands, the fund of the latter suffers; if then scrip of the internal improvement funds can be located on swamp lands, the revenues of swamp land would be diminished; and if the swamp land in dispute can be bought with internal improvements scrip, then the whole of the swamp or overflowed lands can be purchased with internal improvement warrants; and it results that the object of the donation of the swamp land is entirely defeated.

Again, the State sells its scrip; it does not sell the land, and plaintiff must locate his warrant on land not otherwise appropriated. He would further remark, that the Legislature of the State of Louisiana has given the privilege to those settlers on, or cultivating the swamp lands, to enter them in preference to others; no acts of officers, then, permitting persons to enter swamp lands with internal improvements scrip, can deprive them of their legal privileges.

The opinion of the Court corresponds with that of the Secretary of the Interior, A. H. H. Stewart, who on the 23d December, 1851, gave his decision, in reference to the proper construction of the acts of 22d March, 1849, and 28th September, 1850—and in it he says: "As the grants are regarded as taking effect from the dates of the laws making them, respectively, and as vesting the inchoate title in the States, it follows, that any subsequent sale or location of swamp or overflowed lands must be held to be illegal, and the purchase-money refunded, or a change of location ordered. Subsequent entries, however, which have been made by pre-emption in virtue of settlements made prior to the grants will be valid, because in those cases, the right of pre-emption attached from the date of settlement, and because a vested right, which can be vested only by abandonment or a failure in the performance of its conditions." Having thus determined, that internal improvements cannot be located on swamp or overflowed lands, there are two questions to be settled before the suit can be decided: First, whether the donation of the

swamp and overflowed public lands take effect from the date of the law, or the date of the approval of the selections by the Secretary of the Interior, or the issuing of the patent to the State. With relation to this question, the Secretary of the Interior says: "The language of the 1st section of the act of 2d March, 1849, is as follows, viz.: That to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands, which may be or are found unfit for cultivation, shall be and the same are hereby granted to that State."

In the first section of the act of 28th September, 1850, is in language almost identical. The act, 1849, in regard to the State of Louisiana, declares that the fee simple on said lands shall vest in the State upon the approval of the selections of the Secretary; and the general law of September, 1850, enacts that the fee shall vest in the State upon the issuing of a patent. In each case, the granting clause is in the first section, and the words employed, viz.: "are hereby granted," seem to me to impart a grant in presenti. They confer the right to the land, though other proceedings are necessary to perfect the title; when the selections are made and approved or the patents issued, the title thereby becomes perfect, and has relation back to the date of the grant. See Document I. in the evidence. The other question is, whether the land in dispute is swamp or overflowed land. It is proved by the parole testimony (see evidence of John F. Wood) that a considerable portion of this land may be considered high land at this time, but when he first knew it, it was very low, and water on it; he rode through it himself, and the water reached nearly to a horse's belly. He supposes that nearly half of the land now may be considered high land, since it has been ditched. The reason why this is higher now is owing to the ditching that has been done by Mr. Shaffer. It is also proved that the land in dispute has been selected, set over, and approved to the State of Louisiana by the Secretary of the Interior and Commissioner of the General Land Office, as swamp and overflowed lands, on the 16th April, 1853.

We will now proceed to consider some of the points that have been urged in favor of plaintiff.

It is argued that the State of Louisiana cannot, by selling to Shaffer, after it had sold to Scudday, divest plaintiff of a title which it has once given him; but the State held the swamp and overflowed land in trust for a specific object, and had no right to take in payment internal improvement scrip, which diminish the revenues of the swamp land fund to that amount. Another objection is, that the entry could not have been legally made by Shaffer, and there was no proof that he cultivated the land, but it is a legal inference, that the proof was made, inasmuch as the Register, a known officer, allowed the swamp land warrant of Shaffer to be located, as claimed under preference right, and Shaffer could have

located it, even if he did not cultivate it, as there was no opposing claimant with a swamp land warrant.

It is also urged that plaintiff has a patent, and in contests patents have the preference; but this is only when the evidence is about equally divided; but a patent for land, the title of which has no legal foundation, cannot prevail against a perfectly legal title without patent. It is also objected, that if an individual should devote the funds derived from a sale of land to a different purpose than that for which it was intended by the original donor, that he would not be listened to in a court of justice if he should seek to annul the sale. But there is no analogy in this case under consideration, because when a party seeks to enter swamp lands, he being bound to know the law, he must be aware that he has no right to enter it with internal improvement scrip, and he knowingly acting in wrong, cannot invoke the aid of the law.

Before plaintiff located his scrip, he ought to have examined if the land on which he wished to locate his warrant, was already appropriated, and if he did not, he cannot complain if he is now obliged to locate his scrip elsewhere. If it is hard for him to give up a location which would have been profitable, it is still more onerous for Shaffer, who is in possession and cultivating it, as a part of his plantation, to be obliged to abandon it, or pay a large price for it, when by law he is entitled to buy it at the price fixed by the State of Louisiana, as swamp and overflowed lands. It may also be said, that in the supposed case, the person claims the land without offering to refund the money, whereas the State allows the location to be made elsewhere. It is also argued, that if a person sells land, and has not a good title at the time, if the vendor afterwards acquires a good title, that it reverts to the benefit of the vendee; and if the State of Louisiana had no title at the time plaintiff located the land, but has one now, that the title inures to the benefit of Scudday. But this is not a correct analogy, because if the swamp land bill had not passed, plaintiff, with internal improvement scrip, could have located it on any lands not otherwise appropriated, and the State could give a perfect title; and since the swamp land bill had passed, the State can give a perfect title to any part of the swamp lands. The State never had even an inchoate right to allow lands, donated for one purpose, to be entered with scrip of lands intended for another object, so that the State not having an imperfect right to permit swamp lands to be located with internal improvement scrip, can never have a perfect right, and can never acquire a good title, and can never transfer a perfect title.

The question of improvements is reserved by consent of parties.

Judgment.

For the reasons assigned, and the law and the evidence being in favor of defendant, W. A. Shaffer, and against the demand of plaintiff, J. A. Scudday,

It is ordered, adjudged and decreed, that the demand of said Scudday is rejected, and that he pay the costs of this proceeding. It is further ordered, adjudged and decreed, that the title of defendant, Shaffer, to the land in dispute, is recognized, and that said Shaffer be forever quieted in his title to the same.

It is further ordered, that the question as to the liability of McMaster's estate to Shaffer, for his expense in quieting the title to the land in dispute, is reserved.

Thus done and signed in open Court, at the Parish of Terrebonne, this 24th June, A. D. 1854.

(Signed) JAMES L. COLE,
Judge of Fifth Judicial District.

Filed 24th June, 1854.

(Signed) A. BOURG,
Deputy Clerk.

Motion for Appeal.

The plaintiff per counsel comes into Court, and after having obtained leave, moves for a new suspensive appeal; which was allowed by the Court, returnable by consent to the Supreme Court of the State of Louisiana, on the first Monday of January next, 1853, on the said applicant furnishing and executing his bond with approved security in the final sum of two hundred dollars ($200).

Court adjourned "sine die," June 28th, A. D. 1854.

(Signed) JAMES L. COLE,
Judge of Fifth Judicial District.

Certified.

(Signed) J. AYCOCK,
Clerk.

Appeal Bond.

J. A. SCUDDAY
v.
WM. A. SHAFFER.

State of Louisiana, Fifth District Court, Parish of Terrebonne.

Know all men by these presents, that we, James A. Scudday as principal, and Fluvilliers L. Goode, of the Parish of Terrebonne, as security, are held and firmly bound unto Wm. A. Shaffer, of the Parish of Terrebonne, in the final sum of two hundred dollars, lawful money of the United States of America, to the payment of which we bind ourselves, our heirs and legal representatives.

Dated and signed at the Parish of Terrebonne, the 27th December 1854.

In consideration of the foregoing bond is such, that whereas the said Scudday has taken an appeal from a certain judgment rendered in the above-entitled and numbered case, by the above-named Court, at the June Term of said Court, in the year 1854, which appeal is made returnable by consent to the Supreme Court of the State of Louisiana, held in New Orleans on the 1st Monday of January, 1855,

Now, if the said Scudday shall well and truly prosecute said appeal, with effect, or satisfy whatever judgment may be rendered against him, should he be cast, this bond shall be and remain null and void, otherwise in full force and effect.

(Signed) F. S. GOODE.

Filed 27th December, 1854.

(Signed) J. AYCOCK, Clerk.

Clerk's Certificate.

The State of Louisiana.

I, the subscribing Clerk of the Fifth Judicial District Court of the State of Louisiana, sitting in and for, and having jurisdiction over the Parish of Terrebonne, do hereby certify that the foregoing transcript contains a true and faithful copy of all the proceedings had, as well as of all the documents filed and of record in the matter entitled and numbered James A. Scudday v. William A. Shaffer, No. 754.

And I do further certify that the same contains all the evidence, oral and documentary, adduced on the trial of the cause by the parties respectively.

Witness my hand and the impress of the seal of said [L. S.] Court, the 27th day of December, Anno Domini one thousand eight hundred and fifty-four.

(Signed) J. AYCOCK, Clerk.

Indorsed. "Fifth District Court of Terrebonne. Transcript of Appeal, 3795."

In the case entitled and numbered James A. Scudday, appellant, *v.* William A. Shaffer, appellee, No. 754.

Supreme Court. Filed January 9th, 1855.

(Signed) EUGENE LASERE, Clerk.

Proceedings before the Supreme Court of Louisiana.

Supreme Court of the State of Louisiana.

The Court met Monday, February 19th, 1855.

Present: Their Honors, Thomas Slidell, Chief Justice; Cornelius Voorhees; A. M. Buchanan; A. W. Ogden, and H. M. Spofford, Associate Justices.

Appeal from the Fifth Judicial District Court of the Parish of Terrebonne.

JAMES A. SCUDDAY, appellant,
v.
WILLIAM A. SHAFFER, appellee. } No. 3795.

In this case the Court this day delivered their opinion in writing, in the words and figures following:

1010

This is a petitory action for a quarter section of land. The plaintiff claims title by virtue of the location, on the 12th July, 1850, of a warrant of the State of Louisiana, issued under the provisions of an Act of Congress of the 4th September, 1841, and of an Act of the Legislature of the State of Louisiana, of the 28th March, 1844.

The defendant called in warranty his vendor, Alexander McMaster, who sets up two titles, one derived by McMaster, by purchase, from Magdeleine Bilio, in 1836, and the other a title acquired by the defendant himself, by purchase, from the State of Louisiana, on the 16th of April, 1853. The title of Magdeleine Billio is founded on an entry made by her in 1836, and purchased, as evidenced by the receiver's receipt. The entry was subsequently cancelled as fraudulent, and as no patent had issued, the authority of the Commissioner-General to vacate the entry on that ground cannot be doubted. Bettis *v.* Ammonette, 4th Annual, 364; Pepper *v.* Dunlap, 9 R. 288; Guidrey *v.* Woods, 19 L. R. 337; Wilcox *v.* Jackson, 13th Peter's R. 498.

The case must be decided on the relative merits of the two titles derived from the State of Louisiana. The plaintiff derives his title in the following manner: By the eighth section of an Act of Congress of the 4th September, 1841, the Government of the United States granted to each of the several States specified in the act, and among them to Louisiana, 500,000 acres of land, for the purposes of internal improvement. The act provided that the selections of the land were to be made in such manner as the Legislature of the State should direct, the locations to be made on any public lands, except such as were or might be reserved from sale by any law of Congress, or proclamation of the President of the United States. The 9th section of the act provided that the net proceeds of the sales of the lands so granted, should be applied to objects of internal improvement within the State, such as roads, railways, bridges, canals, and improvement of water-courses and draining of swamps. An Act of the Legislature of 1844 provided that warrants for the location of the lands should be sold in the same manner as the lands located—and it was made the duty of the Governor to issue patents for the lands located by warrants, whenever he should be satisfied that they had been properly located. The plaintiff being the holder of such a warrant, located it on the land claimed in the suit. The location having been approved by the Secretary of the Interior, and a certificate to that effect granted by the Register, the Governor of Louisiana issued a patent to the plaintiff, bearing date 12th November, 1852.

The title was then derived in strict conformity with the Act of Congress and the Act of the Legislature of the State.

The opposing title of defendant was derived as follows: Under an Act of Congress of March 2d, 1849, and certain Acts of the Legislature of this State, passed to carry into effect the Act of Congress. The first section of the Act of Congress of 1849 declares, "that to

aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of the swamp and overflowed lands which are or may be found unfit for cultivating, shall be, and the same are hereby, granted to the State."

The second section provides, that as soon as the Secretary of the Treasury shall be advised by the Governor of Louisiana that the State has made the necessary preparations to defray the expenses thereof, he shall cause a personal examination to be made, under the direction of the Surveyor-General thereof, by experienced and faithful deputies, of all the swamp lands therein which are subject to overflow and unfit for cultivation, and a list of the same to be made out and certified by the deputies and the Surveyor-General to the Secretary of the Treasury, who shall approve the same, so far as they are not claimed and held by individuals; and on that approval the fee simple to said lands shall vest in the State of Louisiana, subject to the disposal of the Legislature thereof, provided, however, that the proceeds of said lands shall be applied exclusively, as far as necessary, to the construction of the levees and drains aforesaid.

On the 21st of March, 1850, the Legislature of Louisiana passed an Act to enable the Governor to have the swamp and overflowed lands selected, and, in 1852, they passed an Act, giving a preference in entering such lands to those in possession of or cultivating them, and the time of entering them was further extended by an Act of 1853. The defendant entered this land on the 18th day of July, 1853, by virtue of a preference right claimed under that Act of the Legislature. He was permitted to make this entry at the State Land Office, in consequence of the Secretary of the Interior having on the 14th of April revoked his approval to the State under the Act of 1841, of this and other lands which had been located under warrants sold by the State, in conformity to the Act of the Legislature of 1844.

The reason assigned by the Secretary of the Interior was, that these locations had been made subsequent to the passage of the Act of Congress of 1849, granting to the State all the swamp and overflowed lands. He states in his opinion, that he considered the words used in the first section of that Act as importing a grant *in presenti*, and as confirming a right to the land, though other proceedings were necessary to perfect the title, and that when the title was perfected, it had relation back to the date of the grant. His approval to the State, of the location of the land in controversy, under the internal improvement law of 1841, was revoked, but the land was at the same time approved to the State, as having a vested title to it, under the Act of 1849, and taking effect from the date of the passage of the Act. As the second section of the Act of 1849 declares in express terms, that the fee simple in the lands shall vest in the State, and be subject to the disposal of the Legislature, on the

approval of the Secretary of the Treasury, after certified lists should be made out by the Deputies and Surveyor-General, it is contended by the appellants, that the construction placed on this law, by the Secretary, was erroneous.

We do not consider it necessary to decide that question. It is certain that the Legislature could not have disposed of the land as belonging to the State, under the provisions of that Act, until she had complied with the conditions imposed on her by the Act of Congress, and until the approval of the Secretary of the Treasury; but if she had not chosen to avail herself of the right given to her, to appropriate these lands as swamp lands by defraying the expenses of locating them, she had still the right of locating them under the internal improvement law of 1841, which was unconditional. The construction of the Act of 1849, by the Secretary of the Interior, may be strictly correct, and yet it does not follow that the location of a warrant, under the internal improvement law of 1841, which had been approved by the proper department of the Government, and for which a patent had been subsequently issued by the State, could be revoked, so as to destroy the title conferred by the patent. The question would have been different, if, after the passage by Congress of the Act of 1849, the United States had granted the land away from the State of Louisiana. Such was not the case, and as both the Acts of 1834 and of 1849 were grants of land to the State, we cannot go behind the patent which the State has granted. The patent can only be attacked on the ground of error or fraud. Patterson v. Winn, 5 Peters, 241; United States v. Ardendan, 6 Peters, 728; Lote v. Prudhome, 3 Rob, 283; Boynell v. Broderick, 13 Peters, 437. Thayer v. Lassore & Young, 3 Peters, 320. It is true that a patent issued against law is void; but in the present case, the patent, and all the proceedings on which it was based, were in conformity to the laws. As between the Government of the United States and the State of Louisiana, a question will arise, whether the State is not entitled to an additional quantity of land to be located under the Act of Congress of 1841, in consequence of the swamp lands having been appropriated for locations of warrants issued under the Internal Improvement Act; but we are of opinion that the title which the State has granted to the plaintiff, and for which she has been paid, is unaffected by the acts of the officers of the United States Government, and of the State Government, done since the patent was issued. The ground on which the judgment of the Court below, declaring plaintiff's title to be void, was rendered, seems to be that the object of the donation of the swamp lands by Congress would be thereby defeated. We cannot presume that the State will not do in this respect, what her duty and honor requires; but the title which she grants to lands given to her by the Government of the United States, under either of the laws of 1841 or 1849, cannot be made to depend on the faithful application by the State of the funds derived from them, to the purposes for which the grants were made.

It is therefore ordered, adjudged, and decreed, that the judgment of the Court below be avoided and reversed, that the plaintiff be decreed to be the owner, and that he receive possession from the defendant of the land described in his petition, to wit, Lots Nos. 5 and 6, being the southeast quarter of section number seventy-one, in township number seventeen, in range number sixteen, containing one hundred and sixty-one 52-100 acres, and the case be remanded to be tried as to the claims of the defendant against his warrantor.

The costs in both courts to be paid by the defendant and warrantor.

Petition in Error.

JAMES A. SCUDDAY
v.
WM. A. SHAFFER.

Alexander McMaster called in warranty.

State of Louisiana, City and Parish of New Orleans.

To the Honorable the Judges of the Supreme Court of the State of Louisiana.

The petition of Wm. A. Shaffer, of the Parish of Terrebonne, State of Louisiana, would respectfully represent, That there is error to his prejudice in the final decree rendered in the above-entitled suit by this Court, being the highest Court of law or equity of the State of Louisiana in which decree can be had, and that a writ of error lies from said decree to the Supreme Court of the United States for the following reasons, to wit:

That the title of the petitioner to the land in controversy in the suit is derived from the State of Louisiana, in virtue of an Act of Congress, approved on the 2d day of March, 1849, and that the decree of this Court is against the validity of said title; that said land was set apart to the State of Louisiana, as swamp land, by the Commissioner of the General Land Office; that said selecting and setting apart was approved by the Secretary of the Interior, supported by the written opinion of the Attorney-General of the United States, and that said decree in effect reverses and annuls said decisions of the United States officers.

Wherefore, your petitioner prays a writ of error, that shall operate as a supersedeas, be allowed him, with citations, returnable to the Supreme Court of the United States, upon giving his bond, with security as the law directs.

(Signed) CONNELLY & RIGHTER,
Attorney for Petitioner.

Let a writ of error be allowed according to law.

The petitioner to give bond and security in the sum of three thousand dollars.

(Signed) THOMAS SLIDELL,
C. J.

NEW ORLEANS, March 19th, 1855.

Indorsed: 3795, James A. Scudday, appellant, *v.* Wm. A. Shaffer, appellee.

Petition in Error.

Supreme Court of the State of Louisiana, E. D. Filed February 28th, 1855.

(Signed) EUGENE LASERE,
Clerk.

Writ of Error.

United States of America. The President of the United States of America.

To the Honorable the Judges of the Supreme Court of the State of Louisiana for the Eastern District, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said court, being the highest court of law or equity in said State, in which a decision could be had in the said suit, between James A. Scudday, appellant, and William A. Shaffer, appellee, where is drawn in question the validity of a statute of, and authority exercised under the United States, and the aforesaid decision is against the validity of the said statute, or authority; also, where is drawn in question the construction of a clause of a statute of, and commission held under the United States, and the said decision is against the title, right and privilege, specially claimed and set up under such clause of said statute and commission, a manifest error hath happened, to the great damage of the appellee, as by the complaint appears. We being willing that error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given herein, that then your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, together with this writ, to the Supreme Court of the United States, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further to be done herein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this twenty-eighth day of February, (1855) eighteen hundred and fifty-five.

(Signed) EUGENE LASERE,
Clerk of the Supreme Court of the State of Louisiana for the Eastern District.

Indorsed: No. 3795, James A. Scudday, appellant, *v.* Wm. A. Shaffer, appellee.

Writ of Error.

Supreme Court of the State of Louisiana, E. D. Filed February 28th, 1855.

(Signed) EUGENE LASERE,
Clerk.

Bond in Error.

Supreme Court of the State of Louisiana.

WM. A. SHAFFER
v.
JAMES A. SCUDDAY. } In Error.

Know all men by these presents, that we, William A. Shaffer, as principal, and P. H. Foley, as security, residing within the jurisdiction of this Honorable Court, are held and firmly bound unto James A. Scudday, and unto his heirs, executors, administrators and assigns, in the sum of three thousand dollars, to be paid to the said persons above named, their heirs, executors and administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents, sealed with our seals, and dated at New Orleans, this twenty-eighth day of February, eighteen hundred and fifty-five.

Whereas the above-mentioned W. A. Shaffer has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment in the above-entitled suit, by the Supreme Court of the State of Louisiana.

And, therefore, the condition of the obligation is such, that if the above-named Wm. A. Shaffer shall prosecute his said suit of error to effect, and answer all damages and costs, if he fail to make good his plea, then this obligation shall be void, otherwise of full effect and virtue.

Done and signed this 15th day of March, 1855.

(Signed) WM. A. SHAFFER,
P. H. FOX.

Witness. (Signed) JAS. W. DUNCAN.

Indorsed: No. 3795, James A. Scudday, appellant, *v.* Wm. A. Shaffer, appellee.

Bond in Error.

Supreme Court. Filed February 28th, 1855.

(Signed) EUGENE LASERE,
Clerk.

United States of America.

To James A. Scudday, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, on the first Monday of December next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Louisiana, for the Eastern District, wherein Wm. A. Shaffer is plaintiff in error, and you are defendant in error, to show cause, if any you can, or there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties on that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 19th day of March, A. D. 1855.

(Signed) THOMAS SLIDELL,
Chief Justice of the Supreme Court of the State of Louisiana.

Return.

Received the within citation in error, this 31st March, 1855, together with a true and certified copy of same, and made legal service on 4th day of April, of same year, by delivering the said certified copy of citation in error, to James A. Scudday personally, at his domicil situated at the town of Thibodeaux, Parish of Lafourche. Wherefore I make this my return April 4th, 1855.

(Signed) C. LAGARDE,
Deputy Sheriff.

Sheriff of Lafourche, fees, $1 00.

Indorsed. Supreme Court. Filed January 11th, 1855.

(Signed) EUGENE LASERE,
Clerk.

United States of America.

Supreme Court of the State of Louisiana, for the Eastern District.

I, Eugene Lasere, Clerk of the Supreme Court of the State of Louisiana, for the Eastern District, do hereby certify that the foregoing eighty-eight and a half pages contain a true copy of the transcript of the proceedings had in the Fifth Judicial District Court of the Parish of Terrebonne, in a certain suit wherein James A. Scudday was plaintiff, and Wm. A. Shaffer was defendant; and also of the proceedings had in the Supreme Court, on the appeal taken by said J. A. Scudday, which appeal is now on file in said Supreme Court, under number 3795.